

IN THE UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF VIRGINIA
ROANOKE DIVISION

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| LEMORIAL SILK, |) | |
| Petitioner, |) | Case No. 7:21cv00294 |
| v. |) | <u>OPINION AND ORDER</u> |
| HAROLD W. CLARKE, |) | By: Hon. Thomas T. Cullen |
| Respondent. |) | United States District Judge |

Petitioner Lemorial Silk, a Virginia inmate proceeding *pro se* in this 28 U.S.C. § 2254 action, has filed a motion for discovery (ECF No. 8) and a motion for leave to conduct discovery (ECF No. 10) under Rule 6(a) of the Rules Governing Section 2254 Cases. Rule 6(a) permits a judge to authorize discovery only upon a showing of good cause. Good cause exists when “specific allegations before the court show reason to believe that the petitioner may, if the facts are fully developed, be able to demonstrate” his entitlement to relief. *Bracy v. Gramley*, 52 U.S. 899, 908–09 (1997); *Wolfe v. Johnson*, 565 F.3d 140, 165 n.36 (4th Cir.2009). Whether to grant discovery during a habeas proceeding is committed to the sound discretion of the district court. *Clark v. Johnson*, 202 F.3d 760, 765–66 (5th Cir. 2000).

In the present case, the court finds this discovery motion to be premature. The respondent has not yet filed an answer to the petition, and the court does not yet know what legal and factual issues will be contested. The court rarely finds it appropriate to authorize discovery before determining whether such discovery is necessary and relevant to a contested legal and/or factual issue. For this reason, the court declines to authorize discovery at this

early stage, and the motions for discovery and leave to conduct discovery (ECF Nos. 8 and 10) are therefore **DISMISSED** without prejudice.

The Clerk is directed to send a copy of this Order to Mr. Silk.

ENTERED this 13th day of September, 2021.

/s/ Thomas T. Cullen
HON. THOMAS T. CULLEN
UNITED STATES DISTRICT JUDGE